APPENDIX I—PUERTO RICAN STATUTES

PUBLIC SERVICE ACT OF PUERTO RICO (Act No. 70, approved December 6, 1917; Laws of Puerto Rico, 1917, Vol. II, pp. 432-546).[1]

(No. 70.)

AN ACT

Defining public service companies; and providing for their regulation; prescribing, defining, regulating, and limiting their rights, powers and duties; prescribing and defining the powers and duties of the public service commission and its officers, prescribing and regulating the practice and procedure before such commission and upon appeal, and for other purposes.

Be it enacted by the Legislature of Porto Rico:

ARTICLE I.

Definitions.

Section 1.—The short title of this Act shall be "The Public Service Act of Porto Rico."

Section 2.—For the purposes of this Act public-service companies shall be such natural persons or bodies corporate as may engage in Porto Rico in any of the following pursuits or businesses:

(*a*) Transportation of persons or freight using in whole or in part marine, fluvial or land routes. (p. 432)

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The term "service is used in this Act in its broadest sense, and includes any and all acts performed, and anything furnished or supplied, and all the facilities used or furnished or supplied by public-service companies in the

[1] The parenthetical reference following each extract relates to the page or pages of the volume of insular statutes above mentioned upon which the extract will be found. Except in paragraph headings the italics are supplied.

performance of their duties, to their patrons, employees and the public, as well as the interchange of facilities between two or more public-service companies. (p. 434)

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The term "facilities", as used in this Act, includes all the plant, property and equipment of a public-service company, and any and all other means and instrumentalities, in any manner owned or used, managed or furnished in connection with the business of any public-service company; * * *.

The term "commission", when used in this Act, means the Public-Service Commission created by the Organic Act of Porto Rico. (p. 436)

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ARTICLE II.

Duties and Liabilities of Public-Service Companies.

Section 3.—It shall be the duty of every public-service company:

(*a*) *Safe Service and Facilities.*—To furnish and maintain such service, including facilities, as shall in all respects be just, safe, reasonable, adequate, and practically sufficient *for the accommodation and safety of its patrons, employees, and the public, and in conformity with such reasonable regulations or orders as may be made by the commission.*

* * * * * * * * *

(*c*) *Changes and Repairs of Service and Facilities.*—To make all such repairs, changes, alterations, and improvements, including facilities, as shall be reasonably necessary *for the accommodation or safety of its patrons, employees and the public.* (p. 436)

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(*y*) *Obeying of Orders and Rules of Commission.*—To

observe and obey all and singular the lawful orders and regulations which may be issued or made by the commission in the exercise of the powers conferred upon it by this Act. (pp. 453, 456)

ARTICLE III.

Powers and Limitations of Powers of Public-Service Companies.

Section 4.—It shall be lawful for every public-service company—

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(*d*) *Complaint to Commission.*—To apply to the commission by complaint, in the manner hereinafter provided in this Act, whenever such company claims to be aggrieved by any ruling, regulation, classification, or order which it is or has been required by the commission to observe or carry into effect; and thereupon such public-service company shall be entitled to a full and fair hearing, and a speedy determination of its complaint on the merits, by the commission, and to all just and reasonable relief consistent with the rights and duties of such public-service company. (p. 458)

ARTICLE IV.

Constitution of the Commission.

Section 14.—*Functions, Name, Actions by and seal of Commission.*—The Public Service Commission created by the Organic Act shall discharge all of the executive functions relating to public-service companies heretofore discharged by the Executive Council and shall grant all franchises, rights, powers and privileges of a public or quasi-public nature, as therein and herein provided. *It shall also have power to regulate all public-service companies as therein and herein specified and carry out the provisions of this Act, and it shall be known as "The Public Service Commission of Porto Rico."* * * *. (p. 476)

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ARTICLE V.

Powers and Duties of the Commission.

Section 24. — *General Powers.* — The commission shall have general administrative power and authority, as provided in the Organic Act, and in this Act, to discharge all of the executive functions relating to public-service companies heretofore conferred by law upon the Executive Council, to make all grants of franchises, rights and privileges of a public or a quasi-public nature, to supervise and regulate all public-service companies doing business in Porto Rico, and to carry out the provisions of this Act.

Said power and authority shall include the power *to* inquire into, hear, determine and regulate the service, * * *; the making of *repairs, alterations, and improvements in and to such service, as shall be reasonably necessary for the accommodation or safety of its patrons, employees, and the public;* * * *; *the safety, adequacy, and sufficiency of the facilities, plant and equipment for the carrying on of their business by said public-service companies;* * * *. (pp. 480, 482)

Section 25. — *Regulation of Services, Facilities, Rules, Regulations and Practices.* — Whenever the commission shall determine, after hearing had upon its own motion, or upon complaint, as hereinafter provided, that the service, facilities, rules and regulations, practices, or classifications of any public-service company, in respect to its public duties are unsafe, inadequate, insufficient, unjust, or unreasonable, the commission shall determine and specify by an order in writing to be made and filed as hereinafter provided the just, reasonable, safe, adequate, and sufficient service, facilities, rules, regulations, or practices thereafter to be put in force, observed, rendered, used, or furnished in the performance of its public duties by said pub-

lic-service company; and thereupon it shall be the duty of every public-service company affected by said order to observe and obey said order. (p. 484)

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Section 35.—*Establishment of Standards of Facilities and Services.*— • • • The commission shall also have power, after hearing had upon its own motion or upon complaint, to require public-service companies *to make all such repairs, changes, alterations, additions,* extensions *and improvements in and about their facilities and service as shall be reasonably necessary and proper for the safety, accommodation, convenience and service of their patrons,* employees *and the public.* (p. 498)

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Section 46. — *General Inquisitorial Powers.* — The commission shall, as a commission, or by its individual members, have the power in any part of Porto Rico to subpoena witnesses, to administer oaths, to examine witnesses, or to take such testimony, or compel the production of such books, papers and documents, as it may deem necessary or proper in and pertinent to any proceeding, investigation or hearing held or had by it, and to do all necessary and proper things and acts in the lawful exercise of its powers or the performance of its duties. (p. 510)

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Section 49.—*Power to Enforce Act.*—In addition to the foregoing expressly enumerated powers, the commission shall have authority and it shall be its duty, to enforce, execute and carry out, by its orders, rulings, regulations or otherwise, all and singular, the provisions of articles two and three of this Act, relating, respectively, to the duties and limitations, and to the creation and powers and limitation of powers of public-service companies; and, all and singular, the other provisions of this Act, and the full in-

tent thereof; and shall have the power to rescind or modify any such orders, rulings or regulations (pp. 510,512)

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Section 54.—*Grants subject to Repeal and Alteration.*—All grants of franchises, rights, privileges or concessions shall be subject to amendment, alteration *or repeal by the commission,* and shall provide for the same. (p. 514)

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Section 60.—*Violation of existing franchises.*—Nothing in this article shall be construed to violate the provisions of any franchise that may have been granted by the Ex-executive Council and is now in force; *Provided, however,* That the commission shall have the power to alter, amend, modify or repeal such franchises, and shall exercise all the rights and powers reserved to the Executive Council by any such franchise or privilege, or by any law. (pp. 514,516)

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ARTICLE VII.

Practice and Procedure before the Commission and upon Appeal.

Section 62.—*Hearings to be Public—Self-Incrimination —Perjury.*—All hearings before the commission or before any commissioner, shall be public; and all hearings, investigations and proceedings by the commission shall be governed by such rules, not inconsistent with this Act, as shall be adopted and prescribed by the commission * * *. (p. 516)

Section 64. — *Contempt by Refusal.* — If any individual who shall be subpoenaed to attend before the commission or a commissioner shall fail to obey such subpoena, or if any individual in attendance before the commission or a commissioner shall refuse to be sworn or to be examined, or to answer any relevant question, or to produce any rele-

vant book, paper or document when ordered so to do by the commission or a commissioner, the commission or commissioner may invoke the aid of any district court in Porto Rico to enforce such attendance and testimony of witnesses and the production of books, papers and documents; and such court, on due cause shown, shall issue an order requiring any person to appear before said commission or commissioner and produce books and other documents, if so ordered, and give testimony touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof, in the same manner as in the case of disobedience or the requirements of a subpoena issued from said courts, or a refusal to testify or produce evidence therein. (p. 520)

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Section 69.—*Hearing on Motion of Commission.*—The commission may also, upon its own motion, and upon such notice as it may deem reasonable under the circumstances, institute any similar inquiry or investigation, and fix a time and place for a hearing with the same effect as though complaint had been made as aforesaid and satisfaction thereof refused. (p. 524)

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Section 74.—*Service of Final Orders.*—Every final order of the commission shall be served upon each public-service company affected thereby, in the manner now provided by law for serving a writ of summons upon individuals or corporations; and return of said service shall be made by the person serving said order to the secretary of the commission, in the manner and form now provided by law for making return of the service of a writ or summons; and a certified copy of said order shall be mailed by registered mail to all other parties to the proceedings in which such order is issued, or their respective attorneys; but the failure of any public-service company or of any party to the proceedings to receive such copy shall not prevent the said

order from being conclusive, and taking effect on the date specified therein. (pp. 524, 526)

Section 75.—*Intervention in Final Orders for Rehearing.*—After any finding, determination or order shall have been made by the commission, any public-service company or municipal corporation affected thereby, or any party complainant in the proceedings, or any person, municipal corporation or public-service company, or association duly permitted by the commission, on proper petition and cause shown to intervene may apply, within fifteen days after the service of said order, for a hearing in respect to any matter determined by the commission in or by its hearing or investigation and order issued therein; and the commission may grant and hold such rehearing, if in its judgment sufficient cause therefor be shown. All applications for rehearing shall be by petition, specifically setting forth the grounds upon which such application is based. (p. 526)

Section 76.—*Application for Rehearing not to Stop Enforcement.*—No application for a rehearing shall in anywise operate as a supersedeas, or in any manner stay or postpone the enforcement of the original or existing order, except as the commission may by its order direct. (p. 526)

Section 77. — *Amendments of Orders on Rehearing.*—After such rehearing, should the same be granted, the commission may affirm, rescind, modify or amend its original order. Any order so made after rehearing shall have the same force and effect as an original order.

Section 78. — *Appeals to District Court — How Prosecuted.*—Within thirty days after the filing of any finding or determination by the commission, or after the date of service of any order, unless an application for a rehearing may be pending, and then within thirty days after the refusal of such application, or the entry of an order modifying, amending, rescinding, or affirming the original finding, determination or order, any party to the proceedings af-

fected thereby may appeal therefrom to the District Court of San Juan, Section 1; * * *. (p. 526)

Section 79 (as amended by Sec. 8 of Act No. 2, May 7, 1927; Laws of P. R., 1927, pp. 404-406): *Certification of Record.*—The commission shall be immediately notified by the appellant or appellants of the taking of an appeal, and within thirty days after such notice the said commission shall certify under its official seal to the proper court, the record of the said proceedings. Said record shall include the testimony taken, the findings of facts, if any, of the commission, based upon such testimony, a copy of all orders made by the commission in said proceedings, and a copy of the opinion, if any, filed by the commission. * * *.

Section 80.—*Supersedeas on Appeal.*—No appeal from any order of the commission (except as hereinafter provided) shall in any case operate as a supersedeas of the order appealed from, unless the aforesaid proper court shall, by an interlocutory order, make said appeal as a supersedeas; which interlocutory order shall be made after such notice to the commission and other parties of record, and after a hearing upon said application for an interlocutory order of supersedeas. Upon the granting of a supersedeas upon the application of a public-service company in any case (except as hereinafter provided), the court may, in its discretion, require the filing of a bond in favor of The People of Porto Rico, for the use of all parties aggrieved, in such sum and condition as the court may by its order direct, or may grant the supersedeas upon such other terms and conditions as the court in its discretion prescribes; * * *." (pp. 528-530)

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Section 82.—*Answer by Commission.*—An answer shall be filed by the commission within thirty days after the service of notice upon it of the taking of an appeal. Leave may also be given by the court to any other party to the

record to file an answer. Upon the filing of an answer by the commission the case shall be considered at issue and a hearing shall be held before said court as hereinafter provided, without further pleadings. Copies of the petition and answer shall be served upon the opposite party or parties within five days after filing the same. (pp. 530, 532)

Section 83.—*Record as Evidence.*—At the hearing of the appeal the said court shall, upon the record certified to it by the commission, determine whether or not the order appealed from is reasonable and in conformity with law. (p. 532)

Section 84.—*Orders as Evidence—Burden of Proof.*—In all such cases the orders of the commission shall be *prima facie* evidence of the reasonableness thereof, and the burden of proving the contrary shall be upon the appellant or appellants; and the notes or testimony taken before the commission or any of the members thereof, duly certified under its seal, and filed as aforesaid as a part of the record shall be considered by the courts as the testimony in the case. (p. 532)

Section 85. — *Decree of Court, How Entered.* — If the court shall upon the record find that the order appealed from is reasonable and in conformity with law, it shall enter a decree dismissing the appeal and affirming the order of the commission. If the court shall, upon the record, find that the order appealed from is unreasonable or based upon incompetent evidence materially affecting the determination or order of the commission, or is otherwise not in conformity with law, it may enter a final decree reversing the order of the commission, or, in its discretion, it may remand the record to the commission, with directions to reconsider the matter and make such order as shall be reasonable and in conformity with law. In case the said court shall reverse an order of the commission dismissing a complaint, after an investigation and hearing thereon be-

fore the commission, it shall remand the record and proceedings to the commission, with directions to reinstate the complaint, proceed to another hearing and investigation, and make such order as shall be reasonable and in conformity with law. In making any final decree on any appeal the court shall have full power to dispose of costs. (p. 532)

Section 86.—*New Evidence not to be Taken on Appeal.*—No evidence shall be received at the hearing on any appeal; but if any party shall satisfy the court that evidence has been discovered since the hearing before the commission that could not have been obtained for use at that hearing by the exercise of reasonable diligence and will materially affect the merits of the case, the court may, in its discretion, remand the record and proceedings to the commission, with directions to take such after-discovered evidence, and, after consideration thereof, enter and file such order as shall in the opinion of the commission be reasonable and in conformity with law, from which order an appeal shall lie as in the case of any other final order. (pp. 532-534)

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Section 88.—*Precedence of Appeals.*—All appeals from the orders of the commission to the said court shall take precedence upon the calendars of the said court over all other civil actions, except election cases. (p. 534)

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Section 90.—*Appeals to Supreme Court.*—Any party to the record aggrieved by the final judgment, order or decree of the aforesaid court may appeal therefrom to the Supreme Court. Such appeal shall be taken and prosecuted in the same manner and form as is provided in other cases of appeal to the Supreme Court. (p. 534)

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Section 109.—*Laws Repealed.*—All laws or parts of laws in conflict herewith are hereby repealed.

Section 110.—It is hereby declared that an emergency exists for the immediate taking effect of this Act, and that the same shall therefore take effect five days after its approval.

Act of March 12, 1908.

Section 6 of the Act of March 12, 1908, "An Act concerning the Regulation of Public Service Corporations in Porto Rico", as amended by the Act of March 9, 1911 (*Revised Statutes and Codes of Porto Rico,* pp. 72-79), provided:

> "Whenever in the case of any public service corporation operating under a grant of any character whatsoever, any power has been reserved to the government or to any official authority or public body, whether such government, public body or official now is in existence or exercises authority in the Island of Porto Rico or not, to exercise any supervision or control over said corporation or to approve any tariff of charges, rule or regulation or condition or operation, or to amend, alter or repeal any such grant, then this power shall, on and after the date of passage of this act, be deemed to be vested in the Executive Council; and said Executive Council shall have all the powers heretofore so reserved to any government public body, or public official, and when, in such grant or grants, conditions have been imposed upon the grantee, and such conditions have not been faithfully observed or hereafter may not be faithfully observed, the Executive Council shall have power to annul or repeal said grant, or to take such other action as in its opinion is proper in respect to the matter, provided such conditions shall not have been fully complied with within the reasonable time allowed therefor."

APPENDIX II

OPINION OF CIRCUIT COURT OF APPEALS IN THE FORMER CASE

South Porto Rico Sugar Co. vs. *Munoz*, 28 F. (2d) 820.

OCTOBER TERM, 1928

No. 2271

SOUTH PORTO RICO SUGAR COMPANY, ET AL.,
Plaintiffs, Appellants,

vs.

MIGUEL A. MUNOZ, ET AL., *Defendants, Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PUERTO RICO.

BEFORE JOHNSON, ANDERSON AND HALE, JJ.

OPINION OF THE COURT.
OCTOBER 26, 1928.

ANDERSON, J. On May 28, 1928, the Public Service Commission of Porto Rico issued to appellants an order of notice to appear on June 4, 1928, and show cause why said Commission should not cancel a franchise granted, on March 19, 1901, to appellants' predecessors in title, by the Executive Council of Porto Rico, to use daily 20,000,000 gallons of the waters of Lake Guanica for irrigation, for the construction and operation of a private railroad to run in part over lands subject to public rights, and to construct and maintain a dock on the Bay of Guanica. Without appearing before the Commision, the appellants filed on

June 2, 1928, a bill in equity seeking an injunction to restrain the Commission from interfering in any way with the enjoyment of their powers under this franchise and from asserting any jurisdiction over the appellants in respect to said franchise. The court below sustained a motion to dismiss filed by the attorney general of Porto Rico, holding, in a well-reasoned and cogent opinion, both that the suit was premature, and that the Public Service Commission had jurisdiction. This decision was right on both points.

Courts have no general supervisory power over such tribunals as Public Service Commissions. Judicial interference, apart from express statutory delegation, must be grounded on illegal encroachment upon property rights. *American Coal Mining Co.* v. *Special Coal & Food Commission,* 268 Fed. 563; *Sayers* v. *Montpelier & Wells River R. R.,* 90 Vt. 201.

If we assume for the moment that this Public Service Commission has no jurisdiction, the issuance of an order of notice was no such assertion of authority or threat of irreparable injury as to warrant injunctive interference by the court. It would not follow that, on appearance and argument, the Commission would adhere to an erroneous view as to the nature and extent of its jurisdiction. The appellants' case in that regard is not supported by the cases relied upon by their learned counsel. *Philadelphia Co.* v. *Stimson,* 223 U. S. 605, and cases cited; *Work* v. *Louisiana,* 269 U. S. 250; *Gallardo* v. *Porto Rico Light & Power Co.,* 18 Fed. (2d) 918; *Benedicto* v. *West India & Panama Tel. Co.,* 256 Fed. 417.

Affirmation of the decree below (dismissing the bill) would doubtless be warranted on this ground alone. But it is plainly in the interest of the parties that we deal now, rather than possibly in a later suit, with the fundamental question of the jurisdiction of the Commission to maintain proceedings looking to the repeal, alteration or modification of the appellants' franchise.

Under the first Organic Act of Porto Rico,—the Foraker Act of April 12, 1900, 31 Stat. 77,—Congress provided for this recently acquired possession a legislative assembly, consisting of an elective lower chamber, and, in lieu of a senate, an Executive Council consisting of six heads of the executive departments appointed by the President. At the end of section 31 it was enacted:

> "Provided, however, that all laws enacted by the legislative assembly shall be reported to the Congress of the United States, which hereby reserves the power and authority, if deemed advisable, to annul the same."

Section 32 reads:

> "That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including the power to . . . repeal any and all laws and ordinances of every character now in force in Porto Rico, or any municipality or district thereof, not inconsistent with the provisions hereof: *Provided, however,* That all grants of franchises, rights, privileges or concessions of a public or quasi-public nature shall be made by the executive council, with the approval of the Governor, and all franchises granted in Porto Rico shall be reported to Congress, which hereby reserves the power to annul or modify the same."

Franchises and laws were both thus required to be reported to Congress, which reserved the power to annul either or both.

Under the joint resolution of May 1, 1900, 31 Stat. 715, amending the Foraker Act of April 12, 1900, it was provided,

> "That all franchises, privileges or concessions granted under section 32 of said Act shall provide that the same shall be subject to amendment, alteration or repeal."

This was the familiar provision intended to meet the doctrine of the Dartmouth College case. Pursuant to these

powers, the Executive Council the next year (1901) granted the franchise in question, providing in Article XVII "that the franchises, privileges and concessions hereby granted shall be subject to amendment, alteration or repeal."

The same general power to annul laws enacted by the legislature of Porto Rico is retained in section 34 of the second Organic Act,—the Jones Act of March 2, 1917, 39 Stat. 951. In thus reserving in both Organic Acts power to annul laws enacted and franchises granted by the Porto Rican government, Congress acted in close analogy to its long-continued practice with relation to territories within the boundaries of the present United States,—prospectively states. Compare the Organic Act of Oregon, 9 Stat. sec. 6; of Minnesota, 9 Stat. 403; of New Mexico, 9 Stat. 446; of Utah, 9 Stat. 453; of Washington, 10 Stat. 172. The purpose obviously, both in Porto Rico and with our own territories, was to provide a quasi-guardianship during a probative period, over a developing political society, by requiring full reports (itself a sobering check) of all important performances of the local government, and by reserving power to annul any act sinister or dangerously foolish, in origin or in effect.

The new Organic Act substantially changed the form of government by providing for an elected Senate, having, in general, the legislative powers previously exercised by the abolished Executive Council. Compare section 12. It also provided in section 38 for a Public Service Commission, and enacted:

> "The said Commission is also empowered and directed to discharge all the executive functions relating to public service corporations heretofore conferred by law upon the executive council. Franchises, rights and privileges granted by the said commission shall not be effective until approved by the governor, and shall be reported to Congress, which hereby reserves the power to annul or modify the same."

Congress thus apparently vested full control over franchises, old and new, in the Public Service Commission.

But the Jones Act also vested in the Porto Rican legislature (Compare § § 25 and 37) general legislative authority over all matters of a legislative character not locally inapplicable or inconsistent with the provisions of the Organic Act. Under this power, the legislature, by Act No. 70, approved December 6, 1917 (Laws of Porto Rico, vol. 2, pp. 432-546), § 60, enacted:

> "Section 60. *Violation of existing franchises.* Nothing in this article shall be construed to violate the provisions of any franchise that may have been granted by the Executive Council and is now in force; *Provided, however,* That the Commission shall have the power to alter, amend, modify or repeal such franchises, and shall exercise all the rights and powers reserved to the Executive Council by any such franchise or privilege, or by any law."

This law was of course reported to Congress and it has not been annulled. This has some tendency to show approval by Congress.

> *Tiaco* v. *Forbes,* 228 U. S. 549, 558.
> *Fajardo Sugar Co.* v. *Holcomb,* 16 Fed. (2d) 92, 96.

It is thus clear, and appellants' learned counsel concedes, that the Jones Act or the legislature of Porto Rico, or both together, vested in the Public Service Commission all powers over franchises originally vested in the Executive Council.

The appellants' contention of no jurisdiction in that Commission, therefore, rests entirely on the proposition that Congress reserved to itself alone jurisdiction to repeal or amend franchises granted by the Executive Council. It grounds this proposition on the reservation contained in section 32 of the Foraker Act, *supra,*—"All franchises granted in Porto Rico shall be reported to Congress which hereby reserves the power to annul or modify the same." Necessarily this contention also asserts the invalidity of that portion of section 60 of the Act of Porto Rico, No. 70, approved December 6, 1917, *supra,* which explicitly pro-

vides that the Public Service Commission shall have the power to alter, amend or repeal franchises previously granted by the Executive Council.

We cannot adopt this construction of the general reservation by Congress of the power to annul all franchises and laws of the experimental local government set up by Congress in Porto Rico. We are constrained to hold that the purpose of Congress was, experimentally and gradually, to vest in the Porto Rican government the general powers of state governments, subject to the reserved power to annul or modify franchises and laws if and when Congress sees fit. The reservation of the power to annul franchises granted by the Executive Council is in the same general terms as the reservation of the power to annul all laws. It did not in 1901 exclude the power granted by fair and necessary implication to the Executive Council to modify or repeal franchises granted by that Council. The like reservation contained in the Jones Act does not exclude or cut down the power of the Public Service Commission to repeal or alter franchises granted by it. Like the power to repeal statutes, the body that creates may alter or destroy the creation.

The decree of the District Court is affirmed, with costs to the appellees in this court.